



The Commonwealth of Massachusetts
Operational Services Division
Office of the Comptroller
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Comptroller

May 25, 2001

Department Head
Title
Agency
Address
City, MA Zip

Comptroller Policy Memo #304
Operational Services Division Update #01-33B

Dear Department Head:

During recent months, the Office of the Comptroller (CTR) and the Operational Services Division (OSD) have been reviewing the balance between efficiency and risk assessment with regard to processing contracts. As part of this effort, the audit firm, Deloitte and Touche, performed a risk assessment of the Commonwealth's central review of contracts, which recommended delegation of 10% of the contract dollars. CTR and OSD also recently completed a review of state finance law and procurement statutes to clarify the requirements for Non-Executive Departments. The purpose of this memo is to summarize the relevant procurement statutes and to highlight the applicable procurement and contracting requirements for Non-Executive Departments. It is also to provide you with an opportunity to request an increase in your department's transactional encumbrance delegation to \$100,000 and an increase in your incidental purchase threshold up to \$5,000.

There are several statutes that authorize the State Purchasing Agent to make rules and regulations for the purchasing and delivery of commodities and services for the various state departments. They are M.G.L. Ch.7, § 22, M.G.L. Ch.30, § 51 and 52. These statutes require that goods and services be purchased by or under the direction of OSD. To implement these statutes, OSD, the Executive Office for Administration and Finance and CTR developed procurement regulations (801 CMR 21.00) and a Procurement Policies and Procedures Handbook for Departments for procurement and contracting activities. Your department is required to conduct procurements consistent with the requirements of M.G.L. Ch.7, § 22. However, language was included in 801 CMR 21.00 that exempts all Constitutional Offices, Independent Offices, Elected Officials, and Higher Education from following those regulations. Although your department is exempt from 801 CMR 21.00, we recommend that Departments follow the procedures and requirements of the regulations and the Procurement Policies and Procedures Handbook. A copy of the Procurement Policies and Procedures Handbook can be viewed and downloaded from the OSD webpage at <http://www.osd.state.ma.us/osd/osd.htm>.

This memo will also serve as formal notice that the State Purchasing Agent has delegated procurement authority to your department. Attached to this memo you will find two additional documents: the Department Guidance for Delegation and the CTR/OSD Fiscal and Procurement Policy for Contracts and Grants/Level II. Your department is considered Level II. Please review these requirements carefully and direct any questions to the Office of the Comptroller or the Operational Services Division, as applicable.

Finally, the Comptroller and the State Purchasing Agent are authorizing your department to increase your transactional encumbrance level to \$100,000 and your incidental purchase threshold to \$5,000. Once increased

delegation has been requested and approved, the secondary MMARS PEND 3/5 electronic approval by CTR or OSD will no longer be required for any encumbrance transaction under \$100,000.

Increased delegation will improve the efficiency of the Commonwealth's procurement and contracting activities by empowering your department to execute a significant number of transactions without OSD/CTR approval. In order to receive increased delegation and incidental purchase, the Department Head and Chief Fiscal Officer must sign and forward the attached Delegation Transaction Certification Form to Elizabeth Kilcoyne in the Comptroller's Office prior to July 30, 2001. When submitting the Delegation Transaction Certification Form, please attach a copy of your department's written procurement policies and procedures (or indicate that your department conducts procurements in compliance with 801 CMR 21.00 and the Commonwealth's Procurement Policies and Procedures Handbook). Once the certification form and required documentation are received and the increased thresholds loaded into MMARS, e-mail notification will be sent to your Department.

For departments interested in a better understanding of 801 CMR 21.00 Regulations and the Procurement Handbook OSD will be offering a training from 1:30-4:30 on July 10th, 2001 in Minihan Hall on the 6th Floor of the Hurley Building. Please register with Suzanne Pierre at (617) 720-3116 or via email at DonnaSuzanne@osd.state.ma.us or Donna Fleser at (617) 720-3103 or via email at DonnaSuzanne@osd.state.ma.us. If you have specific topics you would like addressed at this training, please contact Jeanne Campbell.

Should you have any questions regarding the increased delegation and incidental purchase thresholds, please contact Donna Roux (CTR) @ (617) 973-2316 or Jeanne Campbell (OSD) @ (617) 720- 3148. If you have any questions regarding delegation of procurement responsibility to your department under M.G.L. Ch.7, § 22, please contact Ellen Bickelman @ (617) 720-3183. Thank you.

Sincerely,

Martin J. Benison
Comptroller

Philmore Anderson, III
State Purchasing Agent

Cc: Chief Fiscal Officers – via email
Legal Counsels – via email
MMARS Liaisons – via email
Encl: Delegation Transaction Certification Form (Non-Executive)
Department Guidance for Delegation
CTR/OSD Fiscal and Procurement Policy for Contracts and Grants (Level II)



**OFFICE OF THE COMPTROLLER/OPERATIONAL SERVICES DIVISION
FISCAL AND PROCUREMENT POLICY FOR COMMONWEALTH CONTRACTS
AND GRANTS**

(Excluding Construction Contracts and Space Leases)

LEVEL II - Executive Branch: Non-Executive Departments (except the University of Massachusetts System) (Page 1 of 4)

COVERED DEPARTMENTS (BY [MMARS](#) DEPARTMENT CODE): AGO, ART, BCC, BER, BHC, BRC, BRI, BSC, CCC, CPF, CPI, CSW, DAA, DAC, EAS, EFB, ETH, FRC, FSC, GCC, GOV, HCC, HSD, HST, IGO LOT, MAS, MBC, MCA, MCC, MID, MMA, MWC, NAC, NEC, NFK, NOR, NSC, NWD, PLY, QCC, RCC, SAO, SDB, SDE, SDF, SDM, SDH, SDW, SEC, SSA, STC, SUF, TRE, , VWA, WES, WOR, WSC

STATE FINANCE LAW

1. *Payment Review And Certification; No Journal Entries (EXs) Without LEG Notice.* Comptroller examines all accounts and demands for payment for all Commonwealth accounts and funds unless specifically exempted. Comptroller requires affidavit from Department head, or designee, that articles furnished, services rendered or obligation incurred, as certified. Comptroller may not make journal entry (expenditure correction) between accounts if the account ultimately to be charged had insufficient funds at the time the amount was expended from the other account, unless prior notice is sent to HOU and SEN Ways and Means. See [G.L. c. 7A, §3](#), and [G.L. c. 29, §61](#).
2. *Contract Filing; Bill Paying Policy.* Requires that all departments file original or certified copies of contracts as directed by the Comptroller prior to payment. Comptroller shall establish a vendor payment schedule ([Bill Paying Policy](#)). See [G.L. c. 7A, §5](#).
3. *Late Penalty Interest.* Contractors may request interest if payments are not made in 45 days in accordance with Late Penalty Interest Regulations 815 CMR 4.00. See [G.L. c. 7A, §5A](#). Commercial contractors may invoice for interest if they were not paid within 45 days. See [G.L. c. 29, §20C](#). Departments paying bills late, are subject to late penalty interest in accordance with 815 CMR 4.00. Departments must reject unacceptable invoices within 15 days of receipt and give notice of defect to contractor. Late penalty interest must be paid from the same funds used for the expenditure, which was paid late. See [G.L. c. 29, §29C](#).
4. *Statement of Financial Interest for Consultant Contracts.* Requires statements of persons having financial interests for all Consultant (HH subsidiary and N01 – N14) service contracts. [G.L. c. 7A, §6](#).
5. *State Accounting System and Accounting Practices Implemented by Comptroller.* The Comptroller shall implement a state accounting system and issue instructions for the accounting practices to be used by all departments for all assets, liabilities, equity, debt, encumbrances, expenditures, revenues, and expenses of all Commonwealth funds, unless otherwise specified. See [G.L. c. 7A, §7](#).
6. *Uniform Accounting System for Commonwealth.* The Comptroller shall prescribe a uniform system of accounting to record the expenditure by subsidiary for supplies, materials and fixed assets. This shall govern all commonwealth funds and accounts unless specifically exempted by general or special law. See [G.L. c. 7A, §8](#).
7. *Comptroller Access To Records To Enable Proper Accounting.* The Comptroller shall account for all revenue, expenses, debts and obligations due to and from the Commonwealth and shall have access to the books and papers of all departments unless specifically exempted by general *or* special law. See [G.L. c. 7A, §9](#).
8. *Internal Control Guidelines.* The Comptroller shall publish internal control guidelines in consultation with SAO. See [G.L. c. 7A, §9A](#).
9. *Federal Grants.* This section describes the Federal Grant application and administration process. Specifically, Federal Grants are subject to annual appropriation and governed by CMIA and are assessed fringe benefits and indirect costs. See [G.L. c. 29, §6B](#).
10. *Insufficient Appropriations for Required Expenditures.* Departments must do everything legally allowed to manage within their appropriation. Departments must immediately notify ANF and HOU and SEN Ways and Means of the estimated amount of anticipated deficiency in any appropriation. In accordance with other sections of Chapter 29, departments may not incur a liability for the Commonwealth in excess of their appropriation or allotment. See [G.L. c. 29, §9E](#).



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STATE FINANCE LAW (Continued)

11. *Obligation Authorization Limited by Fiscal Year; Interim Budgets and Accounts Payable.* GAA appropriations shall be for ordinary maintenance for the fiscal year unless otherwise authorized. See [G.L. c.29, §12](#). This means goods and services to be paid for with current fiscal year appropriations must be received and accepted within the fiscal year (July 1-June 30) (see [G.L. c. 4, §7, Ninth](#)). Lawful obligations that do not exceed department's 1/12th allotment may be made between July 1 and passage of GAA if there is an interim budget. No commodities or services may be accepted for new fiscal year and no funds may be expended without an Interim Budget or GAA. See [G.L. c. 29, §12A](#). Accounts payable period to pay encumbrances for fiscal year ending on June 30th runs from July 1st through the end of August. FAD may extend the accounts payable period to pay encumbrances until September 15th with special request from department. Unencumbered balances revert on or before September 15th. See [G.L. c.29, §13](#).
12. *Payments Require Current Appropriation, CTR Certification and Approved Warrant.* No payments shall be made without current appropriation, Comptroller certification and approved Governor's warrant. See [G.L. c. 29, §18](#).
13. *Authorization to Contract; Approval of Expenditures.* Department must be authorized to enter into contracts in order to make payments against contracts. Departments must approve itemized expenditures. See [G.L. c. 29, §19](#).
14. *Department Approval of Expenditures With Sufficient Allotments.* Department head or designee must contract for expenditures and approve expenditures before Comptroller certification. Department head or designee may only approve payments with sufficient allotments. See [G.L. c. 29, §20](#).
15. *Ready Payment System.* The Comptroller shall provide a Ready Payment Program for providers of social, educational and rehabilitative services based on projected expenses or services pursuant to 815 CMR 3.00. See [G.L. c. 29, §23A](#).
16. *Obligations May Not Exceed Appropriation.* Departments may not incur a liability for the Commonwealth in excess of their appropriation or allotment. This means that a department cannot sign a contract or amendment or accept services or commodities in excess of current appropriations and allotments. Current fiscal year funds may not be used for prior fiscal year obligations. [G.L. c. 29, §26](#). Appropriations and allotments must be spent in accordance with prescribed subsidiary schedules. [G.L. c. 29, §27](#). "The Comptroller shall refuse to permit a disbursement or incurring of an obligation if funds, or allotments of funds, under an appropriation account or subsidiary account under an appropriation account, sufficient to cover such disbursement or obligation are not available and shall immediately give notice of such refusal to the department, office, commission, or institution proposing the expenditure". See [G.L. c. 29, §29](#).
17. *Violation of State Finance Law.* Any Department head or designee who knowingly violates state finance law shall be punished by fine of \$1,000 or imprisonment for one year, or both. See [G.L. c.29, §66](#).

PROCUREMENT LAW

1. [G.L. c. 30, s. 51](#); [G.L. c. 30, s. 52](#) which state that all services and commodities shall be purchased in accordance with [G.L. c. 7, s. 22](#) which outlines the procurement requirements for supplies, equipment and other property of Commonwealth departments. Level II entities are required to conduct competitive procurements consistent with the above referenced state purchasing statutes and are encouraged, although not required, to conduct procurements using 801 CMR 21.00 and the Commonwealth's Procurement Policies and Procedures Handbook.



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PROCUREMENT LAW (continued)

Departments that do not conduct procurements under 801 CMR 21.00 must establish written procurement policies and procedures that meet all applicable requirements of Chapter 7, section 22 and Chapter 30, sections 51 and 52 including but not limited to the following:

- a) **Procedures for the advertisement and receipt of bids for commodities and services that stimulate open and public competitive procurements. The solicitation document (or evidence of department policy for competitive procurement exceptions) and the bidder's response or statement of work must be filed with the Standard Contract Form.**
 - b) **Procedures for incidental purchase (a one time purchase or a series of purchases for a one time, non-recurring need) that may not exceed \$5,000 when, in the judgement of the department, it is expedient.**
 - c) **Procedures for department-approved exceptions to the competitive procurement process including in cases of emergency, as permitted under Chapter 7, section 22.**
 - d) **Implementation of standardized forms as follows:**
 - i) **Ordering/Encumbrance Form**
 - ii) **PD—Department Purchase Order**
 - iii) **PG—Price Agreement**
 - iv) **SP—Special Purchase Order**
 - ~~vi)v~~ **SC—Service Contract**
 - ~~vii)vi~~ **SM—Service Modification**
 - ~~viii)vii~~ **LO—Lease Order**
 - ~~ix)viii~~ **Contract Forms**
 - (1) **Commonwealth Standard Contract Form and Instructions**
 - (2) **Commonwealth Standard Contract Amendment Form**
 - (3) **Commonwealth Terms and Conditions**
 - (4) **Commonwealth Terms and Conditions for Health and Human Services**
2. [**G.L. c. 15A, §24 ; G.L. c. 15A, §24A; G.L. c. 73, §15**](#) (only applicable to State and Community Colleges);
 3. Any other laws, rules or regulations which pertain to the departments within this Level.

POLICY (Required)

1. Comptroller Regulations: 815 CMR 1.00-9.00
2. [Expenditure Classification Handbook](#)
3. [Comptroller Internal Control Guidelines](#)
4. [Comptroller Policy/MMARS Memos](#)
5. [Comptroller Fiscal Year Memos](#)
6. [Fiscal Year Closing and Opening Instructions](#)
7. [Fixed Asset Subsystem User Guide; Guidance on Non-GAPP Fixed Asset Management](#)
8. [Records Management Policy for Archiving Documents](#)

ADDITIONAL PROCUREMENT/CONTRACT GUIDANCE (Recommended)

1. [Commonwealth Procurement Policies and Procedures Handbook](#)
2. [801 CMR 21.00](#)
3. 808 CMR 1.00
4. OSD Updates, as applicable
5. [**Tax Exempt Lease Purchase \(TELP\) Rules**](#)



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CONTRACT REQUIREMENTS (Required)

1. *Contract Filing.* All contracts must be filed as directed by the Comptroller prior to payment.
2. *Contract Signed/Dated by Authorized Signatories.* Contract must have live signature and date by an authorized signatory of the department and the contractor.
3. *Detailed Description of Performance.* Scope of performance detailed enough to identify appropriate classification of expenditure and proper state accounting system (MMARS) transaction type.
4. *Compensation Identified and Fully Encumbered.* Each contract must have a maximum obligation or specified rates and the full encumbrance for value of contract must be reflected in the state accounting system (MMARS).
5. *Dates in Contract and Encumbrance Match.* Contract effective start date and termination end date must be reflected in the encumbrance transaction in the state accounting system (MMARS).
6. *Consultant Contract Statement of Financial Interest.* For consultant service contracts (Subsidiary HH and N01-N14) a statement of financial interest must be attached.
7. *Proper IRS/Vendor Registration.* The contractor must be registered with proper IRS form in the state accounting system.
8. *Timely Bill Payment.* Bills must be paid within the terms of the contract or in absence of terms within 30 days of receipt of the contractor invoice or receipt of goods or services whichever is later.
9. *Contract Employees Paid on Payroll System.* Individuals that meet IRS employee definition (IRS SS-8 Test) must be paid on the state payroll system.
10. *Required Encumbrance Certification.* All encumbrance authorizations in the state accounting system (MMARS) must include the following certification "The undersigned authorized signatory approving this document certifies that this document and any attachments are accurate and complete and comply with all applicable general and special laws and regulations".
11. **Alternative contracts are acceptable for student interns**

DELEGATION

Departments are expected to request transactional encumbrance delegation for PDs, LOs, SCs, and SMs up to \$100,000 and up to \$5,000 for [Incidental Purchases](#). The head of the Department and the Chief Fiscal Officer must sign the Delegation Transaction Certification Form agreeing to comply with all the applicable laws, regulations, policies, etc. within LEVEL II and agree to follow 801 CMR 21.00 and the Commonwealth's Procurement Policies and Procedures Handbook) or attach a copy of the department's written procurement policies and procedures.

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Department Guidance for Delegation

All decisions on the level of transaction pre-edit versus reliance on Department review through delegation reside with the Comptroller and Purchasing Agent, respectively. The Office of the Comptroller (CTR) and the Operational Services Division (OSD) have been working diligently to find the correct balance that allows for efficiency of operations and risk mitigation through oversight and control. These new levels of delegation are another step in this process. Delegation means that a Department will have more authority and responsibility in processing financial transactions and filing contracts.

Increased authority includes the ability to:

1. Process encumbrance transactions up to a certain dollar limit within the Department;
2. Make incidental purchases up to a certain dollar limit without a structured procurement process or contract; and,
3. Eliminate individual payments up to a certain dollar limit by using the Commonwealth's credit card.

Increased responsibility includes creating and maintaining a management environment that:

1. Provides the appropriate level of review and approval of encumbrance transactions processed within the Departments.
2. Provides for the records management of the contract documents as the Department now maintains the record copy of the contract which is a public document and must be made available upon request.
3. Provides a framework to achieve best value for incidental purchases without a structured procurement or contract.
4. Trusts and empowers employees to use Commonwealth credit cards for Commonwealth business, thus eliminating multiple processes for incidental transactions.

The Department's Internal Control Plan as it relates to procurements, encumbrances, and payment transactions will be the foundation for successful delegation. The Quality Assurance Team will review these procedures when they visit.

With this increase in delegation up to 90% of contracts and amendments in a Department may be delegated. Therefore, beginning May 14th, 2001 Departments became the official record keeper for all contracts and amendments. Contract filing requirements and records management procedures are detailed in Comptroller Policy Memo #305.

If a Department has \$100,000 transaction delegation, the Department is responsible for review and processing of the transaction and supporting documentation within this delegation. These transactions (LO, PD, SC, SM) will be accepted in the accounting system with department security. All transactions greater than \$100,000 will be reviewed and processed by the Comptroller's Office.

The requirements for procurement files do not change with delegation. Procurement files must be complete and available to the Quality Assurance Team. The Quality Assurance Team will meet with Department Chief Fiscal Officers and staff on a schedule based upon the number of procurements conducted by Departments, dollar volume of procurements, a Department's performance on Quality Assurance reviews and other contract and procurement related factors.

These visits will be supplemented with Warehouse queries and analysis of department business. The Quality Assurance Team will follow up regularly as issues arise.

For procurement purposes, Departments are legally classified into three levels: Level I-Exempt, Level II-Non-Executive, and Level III-Executive. Regardless of a Department's procurement level, all Departments must comply with State Finance Law and Comptroller Policy and Regulations.

Level I

- Chapter 7A and 29
- Comptroller Regulations and Policies

Level II

- Chapter 7A and 29
- Comptroller Regulations and Policies
- Chapter 7 § 22, Chapter 30 §51 and 52
- Commonwealth Standard Contract Forms

Level III

- Chapter 7A and 29
- Comptroller Regulations and Policies
- Chapter 7 § 22, Chapter 30 §51 and 52
- Commonwealth Standard Contract Forms
- 801 CMR 21.00
- Commonwealth Procurement Policies and Procedures Handbook